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Comptroller General
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Decision

Matter of: Meridian Management Corporation; Johnson Controls
World Services, Inc.

File: B-281287.10; B-281287.11

Date: February 8, 2000

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Jacqueline B. Gayner, Esq., Ross, Suchoff, Hankin, Maidenbaum, Handwerker & Mazel, and John A. Ordway, Esq., Berliner, Corcoran & Rowe, for Citywide Office Management Services, the intervenor.

Lorraine Lee, Esq., and Barbara Affeldt, Esq., Department of the Army, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency evaluation is unreasonable where the stated evaluation scheme contemplates an evaluation of labor qualifications and mix for each contract requirement, the agency did not so evaluate staffing for significant contract requirements, and the record shows that the awardee did not propose adequate staffing for those requirements.
2. Agency improperly relaxed the solicitation's minimum qualification requirement that key personnel have experience in the operation and maintenance of a comparable government functional activity of the same or similar scope where many of the awardee's key personnel lack governmental experience.

DECISION

Meridian Management Corporation and Johnson Controls World Services, Inc. protest an award to Citywide Office Management Services under request for proposals (RFP) No. DACA51-98-R-0007, issued by the U.S. Army Corps of Engineers, New York District, for base operations and maintenance services at Fort Hamilton, New York. The protesters allege that the agency conducted an unreasonable and unequal evaluation and award selection.

We sustain the protests.

The RFP, issued March 5, 1998, contemplated the award of a fixed-price contract (with some cost reimbursable items) for 1 year with 4 option years. The agency received initial proposals from Johnson (the incumbent contractor), Meridian, and Citywide by the June 5, 1998 closing date. The agency conducted discussions, requested and received revised proposals, and, on September 18, awarded a contract to Citywide. Johnson protested the award alleging, among other things, that a conflict of interest involving one of the technical evaluators improperly biased the source selection in favor of Citywide. The Corps took corrective action in response to the protest and convened a new source selection team that reevaluated proposals, requested and received revised proposals by February 12, 1999, and again selected Citywide's proposal for award. Johnson and Meridian protested that action. Our Office sustained those protests in Johnson Controls World Servs., Inc.; Meridian Management Corp., B-281287.5 et al., June 21, 1999, 2000 CPD ¶ __, essentially because the agency's "best value" evaluation did not evaluate the proposals for technical merit beyond meeting minimum requirements. In response to that decision, the Corps modified its evaluation methodology, reevaluated proposals, and once again selected Citywide's proposal for award. The present protests challenge the agency's latest reevaluation and source selection decision.

The RFP stated that award would be made based on the best overall proposal with technical factors being "more important than price." RFP amend. 0002 §§ M.1.b, M.2.B. The RFP listed, "in descending order of importance," three technical factors: Factor I, Technical Approach; Factor II, Management; and Factor III, Quality Control. RFP amend. 0002 §§ M.1.g, M.2.A. Within each technical factor, there were either three or four subfactors "listed in descending order of importance." RFP amend. 0002 §§ M.1.g, M.2.A. Factor I, Technical Approach, had the following three subfactors: (1) Technical Capability, (2) Labor Qualifications/Mix for Projects, and (3) Past Performance. RFP amend. 0002 § M.2.A. The RFP also stated that technical proposals "will demonstrate an understanding of the technical function/requirements, the technical capability, the requisite labor qualifications, and experience through past performance for providing the following [11] functions:"¹

1. Work Reception and Management
2. Buildings and Structures and Utilities Systems

¹ The functions are described in the RFP's performance work statement (PWS). RFP § C.5.

3. Roads and Grounds
4. Pest Control
5. Refuse Collection
6. Housing and [Unaccompanied Personnel Housing] Operations
7. Supply and Storage
8. Elevator Maintenance and Repair
9. Logistical Support
10. Personal Property Shipping Office (PPSO)
11. Transportation Motor Pool

RFP amend. 0002 § M.A.1.a. Factor II, Management, had the following four subfactors: (1) Organizational Procedures, (2) Operational Structure, (3) Sub-Contract Plans, and (4) Management Qualifications. Id. Factor III, Quality Control, had the following three subfactors: (1) Quality Control Plan, (2) Corrective Action, and (3) Records and Reports. RFP § M.2.A.

The RFP solicited prices for multiple contract line items (CLIN), including indefinite-quantity work, encompassing the various PWS work requirements together with sufficient data to evaluate price reasonableness. RFP amend. 0002 §§ L.9.6, M.2.B; amend 0006 § B.

The RFP also stated:

c. All proposals will be evaluated by a team of Government personnel to determine the extent to which each offeror demonstrates a clear understanding of the requirements of the RFP. The offeror shall submit a proposal that completely addresses all evaluation areas, specifically identifying how each proposed contractual requirement will be satisfied. The evaluation team will rate each proposal strictly in accordance with its content and will not presume that performance will include areas not specified in the offeror's written proposal.

d. Proposals which are unrealistic in terms of management, quality, technical or have unrealistic prices will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements and may be grounds for rejection of the proposal.

RFP amend. 0002 § M.1.

The agency's latest reevaluation was conducted using the offerors' previously submitted proposals, as revised through the final proposal revisions (FPR) submitted by February 12, 1999. Agency Report at 30. The agency did not conduct additional discussions. Id. at 31. The agency's source selection team was composed of the same members that conducted the prior reevaluation. Id.

The technical evaluation was based on the same 900-point scale employed throughout this procurement. Agency Report, exh. 90, Source Selection Evaluation Plan, at 4-5. In the proposal reevaluation, points were assigned under each evaluation criterion in accordance with a methodology which awarded 70 percent of the points available under each criterion for meeting the minimum requirements of the RFP, and awarded higher scores for proposal strengths that offered significant advantages to the government or lower scores for proposal weaknesses. Id. at 5; Agency Report at 29.

The technical evaluators evaluated proposals and then met to determine consensus evaluation scores. Hearing Transcript (Tr.) at 528-29. The technical evaluators then destroyed the record of the technical evaluation that they had compiled but for the consensus scoring sheets. Tr. at 531-32. The consensus scoring sheets identified a respective proposal's strengths or weaknesses under some evaluation criteria; however, under most of the criteria the scoring sheets merely stated that the proposal addressed the minimum requirements of the RFP. Agency Report exhs. 102-104, Evaluation of Proposals. The consensus evaluation assigned 701 points to Citywide's technical proposal, 687.25 points to Johnson's, and 650.75 points to Meridian's. Agency Report at 32; Agency Report, exh. 105, Award Recommendation, at 2.

Citywide submitted the lowest price of [DELETED] for the base year ([DELETED] total including option years), followed by Meridian's price of [DELETED] ([DELETED]), and Johnson's price of [DELETED] ([DELETED]).² Agency Report at 9, 32; Agency Report exh. 105, Award Recommendation, at 2. As was noted in the price evaluation of Citywide's proposal that led to its earlier award selection, Citywide's price was so low that its costs were considered insufficient to pay wages in compliance with the Davis-Bacon Act wage rates required by the RFP.³ Id. at 4. Indeed, the agency asked Citywide about its low price and Citywide responded that it did not take exception to the required wage rates, and that its low price was due in part to [DELETED], although Citywide declined to provide details of [DELETED] to

² The government estimate is \$10,247,592 for the base year and \$54,816,436 overall. Agency Report, exh. 42, Amended Price Analysis, at 1.

³ The RFP required payment of minimum labor rates applicable under the Davis Bacon Act and the Service Contract Act. RFP §§ I.37, I.57; Amend. 006, Attachs. J.7, J.8.

prevent its competitors from learning about it. Agency Report, exh. 42, Amended Price Analysis, at 2; exh. 107, Investigation of [DELETED]. Because our prior decision suggested that the agency, as part of its price analysis, may want to review relevant evidence provided by Johnson during that protest regarding [DELETED], the agency's price analyst investigated [DELETED], but could not determine the existence of [DELETED], and determined "there is still uncertainty as to the validity of Citywide's claim of [DELETED]." Agency Report, exh. 107, Investigation of [DELETED]. The award recommendation to the source selection authority (SSA) stated that there is a risk that [DELETED] does not exist and that Citywide "will lose a substantial amount of money performing the contract." Agency Report, exh. 105, Award Recommendation, at 3. Nevertheless, considering that Citywide's price was close to Meridian's, and that Citywide had confirmed its price and intent to comply with the wage requirements, the report determined that the agency "can not second-guess Citywide much more." Id. at 3-4.

The evaluators recommended award to Citywide, determining that its highest-rated, lowest-priced proposal represented the best value to the government. Agency Report, exh. 105, Award Recommendation, at 2-3. Except for a discussion about the evaluation of subcontracting plans, the evaluators did not meet with the SSA to discuss the evaluation results. Tr. at 527-35.

The SSA reviewed the evaluation results. In the areas of past performance, subcontracting plan, and the PPSO functional area, the SSA reviewed and discussed the proposals' relative strengths and weaknesses, and changed the technical scores to 696.25 points for Johnson's proposal, 687 points for Citywide's, and 655.75 points for Meridian's. Agency Report, exh. 106, SSA Decision, at 1-5. The SSA did not review the proposals under any other evaluation criteria. Tr. at 104-05. The SSA assessed the risk of Citywide's low labor rates as a business decision by Citywide to perform the contract for the prices proposed, while paying its employees the minimum wage rates required under the RFP, "at the risk of earning minimal profit." Agency Report, exh. 106, SSA Decision, at 5. In determining that Citywide's proposal represented the best value to the government, the SSA concluded:

Notwithstanding the fact that technical is more important than price, the technical difference between the offerors is not significant enough to award the contract to the higher priced proposal. The majority of the work effort on this project is not highly complex (refuse collection, pest control, road repair, etc.). Evaluating the risks/benefits of each approach dictates award of the project to the second highest rated technical proposal (Citywide) due to the large price savings to the Government on a yearly basis and over the life of the contract.

Id. at 8.

The agency notified Meridian and Johnson that Citywide had been selected for award. Agency Report, exh. 110, Letters to Unsuccessful Offerors. After debriefings were conducted, these protests followed. The agency has continued the stay on performance under Citywide's contract that was imposed based on the earlier protests. Agency Report at 38.

Meridian and Johnson allege that the technical and price evaluations as well as the resulting source selection decision are unreasonable. Both protesters join in alleging that the technical evaluation largely did not assess differences in technical merit between the proposals consistent with the stated best value evaluation scheme. Meridian's Protest at 1-2; Meridian's Comments at 18-20; Johnson's Protest at 11-15; Johnson's Comments at 8-13. Meridian alleges that the technical evaluation of Citywide's and/or Meridian's technical proposals was unreasonable, not consistent with the terms of the RFP, and/or constitutes unequal treatment of proposals in the areas of past performance, labor qualifications/mix, work reception and management, building and structures, PPSO, transportation motor pool, and experience of key personnel. Meridian's Protest at 1-3; Meridian's Comments at 16-20. Johnson makes similar allegations in the areas of past performance, labor qualifications/mix, experience of key personnel, organizational procedures, operational structure, and technical capability. Johnson's Protest at 12-15; Johnson's Comments at 8-15. Both protesters also allege that the price evaluation was unreasonable because the agency did not have adequate information to support the performance risk and price realism analyses for Citywide's proposal. Meridian's Protest at 2; Meridian's Comments at 14-16; Johnson's Protest at 15-21; Johnson's Comments at 14-16. Additionally, Johnson alleges that the agency's source selection personnel were unfairly biased in favor of Citywide. Johnson's Protest at 23; Johnson's Comments at 17-19.

In reviewing a protest of an agency's evaluation of proposals, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Ogden Support Servs., Inc., B-270012.2, Mar. 19, 1996, 96-1 CPD ¶ 177 at 5. Based on our review, we find that the agency unreasonably evaluated the proposals' labor qualifications/mix and improperly relaxed the minimum personnel requirements for Citywide.

Both protesters allege that Citywide's proposed staffing was severely deficient for performing certain indefinite-quantity work requirements, and that given this staffing deficiency and the RFP evaluation criteria requiring the evaluation of labor qualifications/mix for projects to assess the understanding of the work requirements, the agency could not reasonably determine that Citywide understood the work requirements. Meridian's Comments at 20; Meridian's Post-Hearing Comments, at 2-8; Johnson's Comments at 14-15; Johnson's Post-Hearing Comments at 12-13.

The agency did not evaluate Citywide's proposed staffing plan by specific contract requirements, but rather looked at staffing in terms of the "overall picture" for

contract performance. Tr. at 489-90, 496. The agency states that the RFP did not require the agency to evaluate staffing or staffing mix/qualifications proposed for individual CLINs. Agency's Post-Hearing Comments at 23.

The RFP stated that in order to evaluate "the extent to which each offeror demonstrates a clear understanding of the requirements of the RFP," proposals must "completely" address "all evaluation areas, specifically identifying how each proposed contractual requirement will be satisfied." RFP amend. 0002 § M.1.c (emphasis added). The RFP further identified "labor qualifications/mix for projects" as one of the most important technical evaluation criteria. RFP amend. 0002 § M.2.A. The RFP also stated:

Organizational structures shall show clear understanding of the size and scope of the functions included in the specifications. Sufficient numbers and appropriate type of supervisory, skilled and nonskilled personnel are identified to meet the requirements of the specification.

RFP amend. 0002 §§ L.9.5, M.2.A.1.b. All three offerors' technical proposals included detailed lists of proposed personnel broken down for the various contract requirements.⁴

We find that the terms of the RFP's stated evaluation scheme set out above clearly contemplated an evaluation of the number and type of personnel proposed for each project/contractual requirement. See Pacifica Servs., Inc., B-280921, Dec. 7, 1998, 98-2 CPD ¶ 137 at 4-8; State Technical Inst. at Memphis, B-250195.2, B-250195.3, Jan. 15, 1993, 93-1 CPD ¶ 47 at 7-9. The fact that all offerors' proposals included detailed staffing levels and mix for individual contract requirements indicates that all offerors similarly anticipated such an evaluation. See State Technical Inst. at Memphis, supra.

Furthermore, the agency selectively performed such a staffing evaluation of one of the functional areas, PPSO, to assess offeror understanding, and concluded that Meridian's proposal was deficient for this function. Specifically, in the SSA's decision, she discusses in some depth the offerors' staffing approaches regarding this function and based on her analysis of Meridian's staffing reasonably found that that offeror did not show a "complete understanding of the PPSO function," while Citywide's and Johnson's staffing approaches showed that they did understand this

⁴ Citywide's and Meridian's lists break down proposed personnel by number and category for each CLIN with cross-references to the PWS. Agency Report, exh. 40, Citywide's FPR, at 160-64; Agency Report, exh. 68, Meridian's Proposal Revisions, at 1.87. Johnson's list breaks down proposed personnel by individual work requirements with cross-references to the PWS. Agency Report, exh. 7, Johnson's Proposal Revisions, at 2-25.

function. Agency Report, exh. 106, SSA Decision, at 2-4. She testified that staffing was an important consideration in evaluating the PPSO function. Tr. at 54; see Tr. at 359. The SSA's evaluation of the proposals to perform the PPSO function evidences that an evaluation of staffing mix was essential under the RFP to assess an offeror's actual understanding of a particular function.⁵

The agency's failure to perform a labor qualifications/mix evaluation of the contract work items is significant here because the record demonstrates that Citywide has not proposed staff with the skills necessary to perform the indefinite-quantity work requirements for maintenance and repair labor (CLINs 0002AB, 0002AD) and new construction labor (CLINs 0003AA through 0003AD). The RFP estimate of work for these six CLINs was 68,000 hours for the base year;⁶ this constitutes 20 to 30 percent of the contract value. RFP amend. 0006 at B-5, B-6; Johnson's Post-Hearing Comments at 12 n.12; see, e.g., Agency Report, exh. 7, Johnson's Proposal Revisions § B; exh. 8, Citywide's Proposal Revisions § B.

The technical evaluator selected by the agency to testify at the hearing identified the categories of skilled labor that will be needed to perform this work and stated that Citywide did not propose the skilled labor needed to perform this work. Tr. at 487-96. For example, under CLIN 0003AA ("provide construction labor only for buildings, structures, and utilities"), the technical evaluator stated:

You would need individuals capable to provide all the services that come under new construction. You're going to need mechanics. You're going to need [heating, ventilation, and air conditioning (HVAC)] mechanics, You're going to need plumbers. You're going to need carpenters. You're going to need all the various skilled workers to perform this function.

Tr. at 491. However, Citywide proposed [DELETED] "general maintenance mechanics" and no other classifications of personnel for CLIN 0003AA. Agency Report, exh. 40, Citywide's FPR, at 163. In fact, Citywide proposed only general maintenance mechanics and "laborers" to perform all of the work under all six of these CLINs. Id. at 162-63. The technical evaluator testified that general

⁵ The selective application of evaluating staffing for one particular function to find Meridian's proposal deficient while not evaluating the staffing approaches for the other functions where Citywide's staffing was deficient is evidence of unequal treatment. See U.S. Property Management Serv. Corp., B-278727, Mar. 6, 1998, 98-1 CPD ¶ 88 at 6.

⁶ The estimates for these work requirements throughout the option years were the same as for the base year.

maintenance workers are not skilled laborers; skilled laborers would be identified according to the specific trade category required (e.g., plumbers).⁷ Tr. at 487-88.

Thus, the record demonstrates that Citywide's proposed staffing for these contract requirements is an apparent proposal deficiency that was not considered in the evaluation, and does not support a finding that this offeror understood or can successfully perform a substantial portion of the solicited requirements.⁸ This conclusion is corroborated by a memo prepared by the agency's district labor advisor analyzing proposed labor categories and the prices for these six CLINs as follows:

The work assumed by Citywide cannot be ascertained by the information available, but it does not seem realistic to expect that workers in these two classifications [i.e., general maintenance mechanic and laborer] can perform the required work.

Agency Report, exh. 108, Service Contract Act/Davis Bacon Act Wage Analysis, at 2.⁹ The agency also contends that it was reasonable to evaluate Citywide's proposal higher than Johnson's under the labor qualifications/mix for projects evaluation criterion because Citywide proposed more personnel with New York City certifications and proposed [DELETED] to adjust to changes in contract work requirements. Agency's Post-Hearing Comments at 23. These were the reasons the technical evaluators gave for evaluating Citywide's proposal higher than Johnson's under the labor qualifications/mix for projects evaluation subcriterion. Compare Agency Report, exh. 103, Evaluation of Citywide's Proposal, at 4-6 with Agency Report, exh. 104, Evaluation of Johnson's Proposal, at 4-6. In this case, New York

⁷ Citywide's proposal did so identify specific trade labor categories for other work requirements in the RFP. See Agency Report, exh. 40, Citywide's FPR, at 160-61.

⁸ The evaluator admitted that Citywide had no apparent experience in performing such indefinite-quantity work. Tr. at 461. This suggests that Citywide's technical approach, including staffing, should be considered to assess whether it understands the work. We note that when similar questions were raised about Meridian's PPSO experience, such an analysis was performed.

⁹ The agency argues that this memo was not provided to the source selection team members or the SSA, and played no role in the evaluation and selection decision, and thus should not be afforded any weight. Agency's Post-Hearing Comments at 3. Although this memo was prepared prior to the selection decision, it apparently was submitted only to the agency's district counsel, and the agency offers no explanation as to why this document, with its obvious relevance to the evaluation of proposals, was not given at least to the SSA. While we do not consider this memo part of the source selection record, it does corroborate our conclusion.

City certifications were regarded as more desirable than New York State certifications. Tr. at 386. As for [DELETED], Citywide's proposal generally stated [DELETED].

However, neither of these strengths addresses Citywide's proposed staffing in terms of the specific personnel positions that are needed for the indefinite-quantity work requirements. Based on the lack of such information in Citywide's proposal and this protest record, we conclude that the agency did not reasonably evaluate whether Citywide's proposal was even acceptable in terms of staffing for the work requirements in question, which constitutes 20 to 30 percent of the contract value, much less have a reasonable basis to rate Citywide's proposal higher than Johnson's under this evaluation criterion.¹⁰ In light of the importance of staffing under both the technical approach and management evaluation factors, and given that this marked difference between proposals was not considered by either the evaluators or the SSA, we cannot find the evaluation or source selection decision reasonable and consistent with the evaluation plan stated in the RFP. See Pacifica Servs., Inc., *supra*, at 6-8 (proposal is unacceptable where solicitation requires and proposal fails to demonstrate adequate quantity and appropriate allocation of staff for each PWS task); DynCorp, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 10 (where staffing is an important evaluation criterion and proposals differ materially in proposed staffing plans, agency's failure to consider the specific staffing differences between proposals renders selection of lower-rated, lower-priced proposal unreasonable).

The agency also improperly relaxed terms of the solicitation for Citywide. Specifically, the RFP states that a minimum qualification requirement for key personnel is experience in the operation and maintenance of "a comparable Government functional activity of the same or similar scope." RFP amend 0002 § M.2.A.d (emphasis added); RFP § H.4 (emphasis added). Although Citywide's proposal received a higher rating than either of the other proposals for management qualifications, Agency Report, exhs. 102-104, Evaluations of Proposals, at 9, the majority of Citywide's proposed key personnel do not have comparable government experience. Agency Report, exh. 40, Citywide's FPR, at 139-43. In contrast, all of Johnson's proposed key personnel have comparable government experience.¹¹ Agency Report, exh. 7, Johnson's Proposal Revisions, at 2-41-2-49.

¹⁰ It is undisputed that the protesters' proposals proposed sufficient skilled personnel for these requirements. See Agency Report, exh. 7, Johnson's Proposal Revisions, at 2-25; Agency Report, exh. 68, Meridian's Proposal Revisions, at 1.87.

¹¹ Meridian's key personnel include one person, the quality control manager, who apparently has no comparable government experience. Agency Report, exhs. 68, 84, Meridian's Proposal Revision and FPR, at 2.34-2.39.

The technical evaluators determined that government experience was not critical, and considered the word “comparable” in the requirement to mean “something that compares to a government functional activity of this type.” Tr. at 399, 439. The agency’s position is that any other interpretation of this qualification requirement would render meaningless the term “comparable.” Agency’s Post-Hearing Comments at 25-26. We disagree.

The plain meaning of “comparable government activity” is a government activity comparable to the government activity defined in the RFP. Moreover, the agency was asked whether the minimum qualification requirements were flexible and permitted substitutions, and the agency responded as follows:

No. Only the requirements contained in the solicitation will be considered.

RFP amend. 0003, at 2.

Thus, Citywide’s proposal did not meet the minimum personnel qualification requirements as stated and the agency improperly relaxed the requirement without amending the RFP; this deficiency is exacerbated by the fact that Citywide’s noncompliant proposal was rated higher for management qualifications than Johnson’s compliant proposal. See For Your Info., Inc., B-278352, Dec. 15, 1997, 97-2 CPD ¶ 164 at 4.

We recommend that the agency amend the RFP as needed to state the agency’s actual minimum requirements for personnel qualifications, convene a source selection team, conduct discussions with the offerors, request final technical and price proposal revisions, reevaluate proposals consistent with the terms of the RFP, and make a new source selection decision.¹² If an offeror other than Citywide is selected for award, Citywide’s contract should be terminated. We also recommend that the agency reimburse the protesters their reasonable costs of filing and pursuing

¹² As noted, the protesters have made numerous other contentions that we do not consider here since we recommend that the solicitation be amended and revised proposals be submitted. While we do not decide these issues, our review disclosed evidence that suggests unequal treatment by the evaluators in favor of Citywide that we think makes it advisable to convene a new source selection team.

these protests, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1999). The protesters should file their claims for costs, detailing the time expended and costs incurred, with the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

Comptroller General
of the United States